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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,442	10/23/2003	Wayne H. Whittaker	UNS-103-B	8021

7590 01/24/2007
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EXAMINER

GILBERT, WILLIAM V

ART UNIT	PAPER NUMBER
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3635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/692,442

Applicant(s)

WHITTAKER ET AL.

Examiner

William V. Gilbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 and 10-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-9 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/18/03, 06/07/04, 02/24/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a First Action on the Merits. Claims 1-20 are pending. Claims 4-6 and 10-16 are withdrawn from consideration. Claims 1-3, 7-9 and 17-20 are examined below

Election/Restrictions

1. Claims 4-6 and 10-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 09 January 2007.

It should be noted in Applicant's response dated 09 January 2007, that Applicant elected Species V, Figure 8, yet Applicant selected no corresponding claims. Examiner therefore selected the corresponding claims to coincide with Species V, Figure 8: Claims 1-3, 7-9 and 17-20.

Claim Objections

2. Claims 3 and 9 are objected to because of the following informalities: claiming combination of the apparatus and substructure (Claim 3, line 5; Claim 9, line 9) where the substructure is not earlier claimed. Examiner suggests if Applicant wants to claim the substructure in combination with

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the apparatus, the preamble should be written to claim both.

Applicant claims in Claim 1, "an apparatus...with respect to a substructure" (lines 1 and 2) which claims only the apparatus, not the substructure. Appropriate correction is required.

Claim 19 is objected to because of the following informalities: misspelling of "communicatable" (line 3). Examiner believes Applicant intended "communicable". Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an

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invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 3 and 9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 8 and 9 of U.S. Patent No. 6,739,568. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 1 and 2 combined, Claims 8 and 16 of the '568 patent read substantially similar to Claims 1, 3 and 9 of the application; Claims 9 and 17 of the '568 patent read substantially similar to Claim 2 of the application.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 7-9 and 17-19 are rejected under 35

U.S.C. 102(b) as being anticipated by Cristy (U.S. Patent No. 4,074,474).

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Claim 1: Cristy discloses an apparatus (Figure 2, generally) having a rigid enclosure with an upper portion (42) and a lower portion (22, 24) and means for telescopically adjusting the upper and lower portions (70, inflation and deflation is telescopic adjustment) to provide a leveling adjustment.

Claim 2: the upper portion has a flange (50) with an aperture (48), and the lower portion has an anchor ring (54) with a rod (48) connected through and extending through the aperture in the upper portion, and a slip joint connected to the flange of the upper portion for releasably connecting the rod to the flange.

Claim 3: the prior art has a bearing member (44) in the enclosure and connected to the lower portion (24) and a support member (60) between and in contact with the bearing member (44) and the substructure (20).

Claim 7: the support member (60) may be replaced with other support members.

Claim 8: the support member (60) is an inflatable air bag (Figure 3, generally).

Claim 9: Cristy discloses an apparatus with a rigid enclosure having an upper portion (42) and lower portion (24) telescopically connected to each other, a bearing member (44) in

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the enclosure and connected to the lower portion (24) and a support member (60) between the bearing member (44) and substructure (20).

Claim 17: the prior art discloses the support member (60) is removable so that it may be replaced.

Claim 18: the support member is an inflatable air bag.

Claim 19: the prior art discloses a conduit (72) coupled to the air bag (60) and communicable with an air source.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cristy in view of Doyle (U.S. Publication 2005/0191956).

Claim 20: Cristy discloses the conduit (72) communicates with the air bag (60), but it does not disclose the conduit extends through the substructure (34). Doyle discloses a

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conduit (Figure 4, element 62) extending through a substructure (58). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the conduit in Cristy extend through the substructure as in Doyle because it is well known in the art to place conduits through substructures for concealment purposes and placing it in the substructure would also provide additional protection from the elements.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Conner (U.S. Patent No. 3,235,221); Pocanschi (U.S. Patent No. 4,514,942); Musschoot (U.S. Patent No. 3,112,922); Brown (U.S. Patent No. 2,605,066).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571.272.6848. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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David V. K...
EXAMINER
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